

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Chris Olmsted	Team: Squad #9	CCRB Case #: 202004096	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/30/2020 9:20 PM, Saturday, 05/30/2020 9:35 PM	Location of Incident: East 1st Street and Bowery	Precinct: 09	18 Mo. SOL 11/30/2021	EO SOL 5/4/2022	
Date/Time CV Reported Fri, 06/05/2020 4:32 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 06/05/2020 4:32 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. LT Adam Mellusi	00000	931825	SRG 2
3. POM Erik Fischer	26062	955917	SRG 4
4. DI Andrew Hillery	00000	925457	SRG 1
5. PO STEVE SILVERSTEIN	19561	959234	SRG 2

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Benjamin Quinn	03468	965831	107 PCT
2. POM John Swofford	12809	953461	077 PCT
3. POM Carl Callender	28550	944020	SRG 4
4. POM Eric Brown	08307	962271	LEG BUR
5. POM Daniel Meblin	08367	964650	001 PCT
6. POM Vinord Andrew	11378	965927	001 PCT
7. POM John Ferguson	09473	966051	103 PCT
8. POM Rico Iantorno	11296	954957	077 PCT
9. SGT Duane Barnes	04713	946626	I T B
10. POM Bryan Wilson	10392	942712	SRG 2
11. LT Peter Sotiriou	00000	924515	SRG 3
12. POF Monika Washack	15689	944150	001 PCT
13. POM Nicholas Azzolino	20550	964903	001 PCT
14. AC Stephen Hughes	00000	874365	PBMS
15. INS Gerard Dowling	00000	915640	SRG
16. CPT STEPHEN SPATARO	00000	939513	006 PCT
17. PO NICHOLAS TERRETT	20643	964314	001 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
18. DC JOHN DADAMO	00000	913627	SRG
19. PO NORDWING VESZTER	07357	952321	SRG 04

Officer(s)	Allegation	Investigator Recommendation
A.DI Andrew Hillery	Force: Deputy Inspector Andrew Hillery used physical force against § 87(2)(b)	
B.LT Adam Mellusi	Force: Lieutenant Adam Mellusi used physical force against § 87(2)(b)	
C. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

Case Summary

On June 5, 2020, § 87(2)(b) filed this complaint via telephone with the CCRB.

On May 30, 2020, § 87(2)(b) was part of a protest group of several hundred pedestrians and cyclists that marched from the Barclays Center in Brooklyn to Union Square in Manhattan. At approximately 9:20 p.m., on The Bowery between East Houston Street and East 1st Avenue in Manhattan, the protest group encountered several details of NYPD officers. Clashes occurred, resulting in this complaint and CCRB complaints 202003897, 202003969, § 87(2)(g)

In this case, at the above time and place, Deputy Inspector Andrew Hillery of the Strategic Response Group (SRG), assisted by PO Erik Fischer of SRG 4, Lieutenant Adam Mellusi and PO Steve Silverstein of SRG 2, PO Nicholas Terrett of the 1st Precinct, PO Rico Iantorno of the 77th Precinct, Captain Stephen Spataro of the 6th Precinct, an unidentified police officer, and an unidentified police supervisor, arrested § 87(2)(b) using physical force (**Allegation A: Force**, § 87(2)(g)). During the arrest, Lieutenant Mellusi allegedly punched § 87(2)(b) twice in his right eye (**Allegation B: Force**, § 87(2)(g)) and an officer allegedly spoke discourteously to § 87(2)(b) (**Allegation C: Discourtesy**, § 87(2)(g), § 87(4-b))

Across the relevant investigations, NYPD Legal provided 66 BWC videos and identified 45 negative results for BWC footage related to this incident. § 87(2)(b) appears clearly in nine videos. Videos from PO Nordwing Veszter of SRG 4 (Board Review [BR] 01), PO Terrett (BR 02), PO Bryan Wilson of SRG 2 (BR 03), and Sergeant Duane Barnes of the Information Technology Bureau (BR 04) contain footage material to § 87(2)(b)'s allegations. A video from Lieutenant Richard Mack of SRG 4 contains footage material to officer identification (BR 05). PO Veszter, PO Wilson, Sergeant Barnes, and Lieutenant Mack's Axon Body 2 cameras recorded their videos in their default time zone, Zulu, as indicated by the letter 'Z' after their internal timestamps. On May 30, 2020, Zulu time was four hours ahead of Eastern Daylight Time (EDT). PO Terrett's Axon Body 3 camera recorded his video adjusted to EDT, as indicated by the "-400" after the internal timestamp.

§ 87(2)(b)

Findings and Recommendations

Allegation (A) Force: Deputy Inspector Andrew Hillery used physical force against § 87(2)(b)

Allegation (B) Force: Lieutenant Adam Mellusi used physical force against § 87(2)(b)

Allegation (C) Discourtesy: An officer spoke discourteously to § 87(2)(b)

On May 30, 2020, § 87(2)(b) rode his bicycle behind a large group of protestors from the Barclays Center in Brooklyn into Manhattan. The group headed north, turned onto East Houston Street, and turned onto The Bowery, where they encountered multiple details of NYPD officers. By the time § 87(2)(b) arrived at the intersections, clashes between officers and protestors were ongoing and several individuals had already been arrested.

§ 87(2)(b) stated to the CCRB that he heard a commotion behind him and stopped pedaling at which point an officer pulled his bike from under him, grabbed him, and pulled him to the ground. A male officer wearing a "green polo shirt" punched § 87(2)(b)'s right eye twice. An officer zip-tied § 87(2)(b) denied resisting officers during his arrest. § 87(2)(b)

stated, “my bike,” and an officer § 87(2)(b) could not describe stated, “We don’t give a fuck about your bike. It’s not yours anymore.” (BR 07)

The CCRB interviewed civilians § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b) related to this complaint.

§ 87(2)(b) § 87(2)(b) stated he witnessed § 87(2)(b) § 87(2)(b) “scuffle” with officers as he was being placed under arrest, but § 87(2)(b) § 87(2)(b) could not recall specific details. (BR 15)

§ 87(2)(b) stated that he did not witness § 87(2)(b) s arrest or the allegations in this complaint. (Board Review 16)

§ 87(2)(b) stated he did not witness or recall what happened with § 87(2)(b) during the incident. (Board Review 17)

§ 87(2)(b) was in the immediate vicinity of § 87(2)(b) s arrest during the incident but did not witness or did not recall details of it. (Board Review 18)

The investigation interviewed Deputy Inspector Hillery, PO Fischer, Lieutenant Mellusi, PO Silverstein, PO Terrett, PO Iantorno, and Captain Spataro about this incident.

Deputy Inspector Hillery recalled being in the vicinity of East 1st Street and The Bowery at approximately 9:20 p.m. on May 30, 2020, but he recalled no specific details about what occurred there. He did not recall the arrest of § 87(2)(b) BWC footage from Sergeant Barnes, BWC footage from PO Wilson, and footage from CV1 did not refresh his recollection of the incident. (BR 08)

PO Fischer stated that he had no independent recollection of this incident. BWC footage from Sergeant Barnes and PO Wilson did not refresh his recollection. PO Fischer stated he did not punch a civilian in the eye and did not witness another officer do so. PO Fischer stated he did not tell a civilian, “we don’t give a fuck about your bike” during the incident. PO Fischer did not activate his BWC during this incident. (BR 09)

Lieutenant Mellusi stated he was at the location during the incident. He recalled being on the west side of the street and did not recall § 87(2)(b) s arrest on the east side of the street. He stated it was possible he assisted in the arrest of § 87(2)(b) on the east side of the street as he generally recalled assisting on multiple arrests. BWC footage from Sergeant Barnes and PO Wilson did not refresh his recollection of the incident. Lieutenant Mellusi stated he could not determine whether he was the officer in the gold helmet interacting with § 87(2)(b) in those videos. Lieutenant Mellusi stated that he and Lieutenant Mack were the only officers on scene wearing gold helmets. Lieutenant Mellusi stated he did not punch a civilian in the eye and did not witness another officer do so. He stated he did not recall telling a civilian, “we don’t give a fuck about your bike” during the incident or hearing another officer do so. Lieutenant Mellusi stated his camera became detached from his chest prior to this incident and he was unable to reattach it afterward. He stated that during this incident his BWC was in his pocket but was recording. (BR 10) NYPD legal provided no BWC file, obscured or otherwise, from Lieutenant Mellusi.

PO Silverstein stated he did not recall the events of May 30, 2020. BWC footage from PO Wilson, BWC footage from PO Terrett, and footage from CV1 did not refresh his recollection of the incident. PO Silverstein stated he did not activate his BWC during this incident. (BR 11)

PO Terrett recalled being at the incident location but had no recollection of § 87(2)(b) s arrest. BWC footage from his camera, BWC footage from PO Wilson’s camera, and footage from CV1 did not refresh PO Terrett’s recollection of § 87(2)(b) s arrest. (BR 12)

PO Iantorno stated he did not recall this incident. BWC footage from PO Wilson, BWC footage from PO Terrett, and footage from CV1 did not refresh his recollection of the incident. PO Iantorno stated he did not strike § 87(2)(b) during the incident. He did not recall whether he saw another officer strike § 87(2)(b) He did not state to § 87(2)(b) “we don’t give a fuck about your bike.” He did not recall whether he heard another officer make that statement. PO Iantorno stated his BWC’s battery died prior to this incident. He has a memobook entry to that effect at approximately the incident time. (BR 13)

Captain Spataro recalled being at the incident location but stated his memory of the evening was hazy as he participated in hundreds of arrests during protests. BWC footage from PO Terrett did not refresh his recollection. (BR 14)

Sergeant Barnes' BWC video beginning at 03:01 and PO Wilson's BWC video beginning at 05:21 shows § 87(2)(b) picking up a bicycle from the ground, turning away from Deputy Inspector Hillery and PO Fischer, and walking toward the sidewalk with both his bicycle and the one he picked up. Deputy Inspector Hillery and PO Fischer pursue § 87(2)(b) onto the sidewalk, where Deputy Inspector Hillery grabs a wheel of the bicycle § 87(2)(b) picked up and begins pulling on it while PO Fischer attempts to grab § 87(2)(b)'s left arm. § 87(2)(b) maintains hold of the two bicycles. Lieutenant Mellusi and PO Iantorno immediately join Deputy Inspector Hillery and PO Fischer. Lieutenant Mellusi grabs § 87(2)(b)'s right arm and PO Iantorno attempts to grab § 87(2)(b)'s left arm but is initially blocked by PO Fischer. An unknown supervisor joins Lieutenant Mellusi and appears to attempt to take one of the bicycles from § 87(2)(b). An unidentified patrol officer squats and tries to pull a bicycle away from § 87(2)(b). PO Silverstein tries to reach § 87(2)(b) but is blocked by the squatting officer. Captain Spataro and PO Terrett attempt to reach § 87(2)(b) but are blocked by PO Iantorno. Deputy Inspector Hillery lets go of the bicycle he was pulling on and the squatting officer pulls the bike away from § 87(2)(b). PO Terrett moves around Captain Spataro into the space the squatting officer vacated. § 87(2)(b) ends up on the ground but is obscured by officers at that moment in both recordings and what actions officers and § 87(2)(b) take are unclear. (BR 03)(BR 04)

PO Terrett's BWC video begins with the moment he filled the space around § 87(2)(b). At 00:00, § 87(2)(b) is on the ground surrounded by PO Terrett, the unidentified supervisor, Lieutenant Mellusi, PO Iantorno, and Captain Spataro. Between 00:00 and 00:08, the unidentified supervisor, Lieutenant Mellusi, and PO Iantorno appear to physically interact with § 87(2)(b) but § 87(2)(b)'s body is on the ground below the frame of the video and what actions officers and § 87(2)(b) take are unclear. At 00:08, officers stand up, begin interacting with each other, and begin moving away, suggesting § 87(2)(b) is restrained at this point. PO Terrett's BWC does not have audio until 01:00. (BR 02) No other video provides further information.

PO Terrett's BWC video between 00:05 and 00:24 shows the yellow-helmeted officer in an NYPD bike uniform who participated in § 87(2)(b)'s arrest walking northbound on the east side of The Bowery after disengaging from § 87(2)(b). That officer appears to be the only yellow-helmeted officer in the area. (BR 02) PO Wilson's BWC video between 07:25 and 07:50 shows one yellow-helmeted officer walking from the east side of The Bowery to the west and speaking with a second yellow-helmeted bike officer on the west side of the street. (BR 03) Lieutenant Mack's BWC video between 07:13 and 07:30 shows a yellow-helmeted officer arriving on the west side of The Bowery. He speaks to Lieutenant Mack and during the conversation his name is visible on his uniform as Lieutenant Mellusi. (Based on the identical events captured, the internal timestamp of Lieutenant Mack's BWC appears to be 32 seconds ahead of PO Wilson's.) (BR 05) Based on these videos, the investigation identified the yellow-helmeted officer in a bike uniform who participated in § 87(2)(b)'s arrest as Lieutenant Mellusi. All videos with footage of § 87(2)(b)'s arrest show only one officer in an NYPD bike uniform interacting with § 87(2)(b).

Patrol Guide Procedure 211-01 states, "Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody." It further states, "In determining whether the use of force is reasonable, members of service should consider the following:

- a. The nature and severity of crime/circumstances,
- b. Actions taken by subject,
- c. Duration of action,
- d. Immediacy of perceived threat or harm to subject, members of the service, and/or bystanders,

- e. Whether the subject is actively resisting custody,
- f. Whether the subject is attempting to evade arrest by flight,
- g. Number of subjects in comparison to number of MOS,
- h. Size, age, and condition of subject in comparison to MOS,
- i. Subject's violent history, if known,
- j. Presence of hostile crowd or agitators, and/or
- k. Subject apparently under influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.” (BR 19)

Patrol Guide Procedure 200-02 states officers pledge to “render [their] services with courtesy and civility.” (BR 20)

Deputy Inspector Hillery initiated the arrest of § 87(2)(b) after witnessing § 87(2)(b) pick up and attempt to walk away with property Deputy Inspector Hillery could reasonably assume did not belong to § 87(2)(b). Additional officers assisted in the arrest, but Deputy Inspector Hillery remained the ranking officer involved. BWC footage shows § 87(2)(b) struggling over the property with Deputy Inspector Hillery and the officers who came to assist and shows officers grabbing and pulling at § 87(2)(b) while trying to take him into custody. A witness to § 87(2)(b)'s arrest described what he saw between § 87(2)(b) and officers as “a scuffle.” § 87(2)(g)

§ 87(2)(b) alleged that after officers took him to the ground Lieutenant Mellusi punched him twice in the right eye. Lieutenant Mellusi did not recall § 87(2)(b)'s arrest but denied punching him. No officer interviewed had an independent recollection of the incident. No video evidence captures what occurred between § 87(2)(b) and officers while § 87(2)(b) was on the ground. § 87(2)(g)

§ 87(2)(b) alleged that immediately after he was restrained he stated, “my bike” and an officer stated, “we don’t give a fuck about your bike.” § 87(2)(b) could not describe the officer who allegedly made this statement. The only extant video evidence from this period does not have audio. No officer interviewed had an independent recollection of the incident. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to one other CCRB complaint and has been named as a victim in no other allegations (Board Review 22).
- Deputy Inspector Hillery has been a member-of-service for 21 years and has been a subject in 5 other CCRB complaints and eight other allegations, of which one was substantiated.:
 - § 87(2)(g)
- Lieutenant Mellusi has been a member of service for 19 years and has been a subject in 3 other CCRB complaints and six other allegations, of which one was substantiated.:
 - 201208548 involved a substantiated allegation of Discourtesy – Word against Lieutenant Mellusi. The CCRB recommended Instructions and the NYPD imposed no penalty.

§ 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of January 26, 2022, the New York City Office of the Comptroller is checking for a record of a Notice of Claim being filed in regards this to complaint (BR 23).

§ 87(2)(b)

Squad No.: 09

Investigator:	<u>Christopher Olmsted</u>	<u>Investigator Chris Olmsted</u>	<u>01/29/2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Monique West</u>	<u>IM Monique West</u>	<u>02/04/2022</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date